

REMARKS

In the Official Action mailed 4 January 2007, the Examiner reviewed claims 146, 148, 174-179, and 189-196. The Examiner has rejected claims 146, 148, 174-178, and 189-196 under 35 U.S.C. §103(a); has rejected claim 179 under 35 U.S.C. §103(a).

No claims are amended.

The rejections in the Official Action are respectfully traversed below, and reconsideration is requested.

Rejection of Claims 146, 148, 174-178, and 189-196 under 35 U.S.C. §103(a)

The Examiner has rejected claims 146, 148, 174-178, and 189-196 under 35 U.S.C. §103(a) as being unpatentable over Campbell (US 6212496) in view of Adams (US 6594366). Reconsideration is requested, because the Examiner has not properly interpreted the claims, and given a proper interpretation, has not presented a *prima facie* case of unpatentability of the claims. In particular, the Office Action does not address the specific limitation reading, “the headset including processing resources mounted thereon, including ...” The claim literally requires the processing resources specifically recited in the claim to be mounted on the headset. Claim 146 is reproduced below for convenience.

146. An audio data playback device comprising:
- a headset, the headset including processing resources mounted thereon, including a data processor; a data storage medium, coupled to the data processor, storing a hearing profile of a customer;
 - an audio transducer, coupled to the data processor; a communication port coupled to the processor;
 - logic to produce customized audio data, by processing audio data received on the communication port from an external source using the hearing profile; and
 - a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user interface supporting an interactive process to provide the hearing profile.

The Examiner has interpreted the claim so that it reads on a system in which the listed processing resources, including a processor, data storage medium, logic, etc., are not mounted in the headset. Applicant submits that the interpretation is incorrect. Reading the claim as a whole, the term “including” must be interpreted to require that the series of elements that are object of the second “including” on line 2, be part of the processing resources mounted on the headset. To interpret otherwise renders the use of the term “including” absolutely meaningless.

According to the plain language of the claim, the *prima facie* case is incomplete.

The Campbell reference describes a cellular phone which executes a process for setting user parameters, using resources available on the phone. See, column 5, lines 60 et seq. The cellular phone of Campbell does not constitute a headset, does not provide a hearing profile using resources on the phone to interact with a remote user interface, and does not include the features recited in claim 146.

Adams shows a basic headset technology, and teaches the modification of a multifunction telephone/radio device that acts as both a telephone and a radio by including a “sensing jack.” (Col. 1, lines 43-44.) The “sensing jack” of Adams automatically detects the type of headphone that is plugged into it, whether it is a stereo headphone for use with a radio or a headphone with at microphone for use with the phone. Based on this detection, the telephone/radio device can switch to the matching telephone or radio mode of operation. Adams does not describe any processing resources on the headphone. Campbell describes a telephone with resources for adapting the phone for processing telephone calls. If one combined Campbell with Adams, the resulting device is a telephone/radio with personalization on the phone, which can work in two modes and has a “sensing jack.” No technology is found on the headset in the combination, and no technology for personalizing the headset is provided.

Claim 174 recites coupling the headset “via a communication medium to an external data processor having a user interface.” Thus, like claim 146, the claim includes using a headset and headset mounted resources to interact with a remote user interface. There is no similar process described in Campbell.

The present invention extends personalized audio to a new class of playback device and process, supporting personalized playback on a headset designed for playback of entertainment audio and other audio delivered to a headset. Prior art headsets do not include processing

resources and user interface resources sufficient to support interactive processes for providing hearing personalization.

The extension of personalization to a headset is not obvious from the telephone industry technology used to provide specialized service for hearing impaired people. Rather, it represents a departure from traditional thinking about hearing impairment and is not known from the prior art. Once the headset is personalized as taught herein, it could be used for connection with a computer, a television, a stereo and other devices. The personalized headset becomes the center or the "hub" of a personalized audio system "wheel," independent from any particular one of the audio sources on the spokes. As suggested by Campbell and other telephone system audio, one could personalize his/her cell phone, but when the user picks up another phone, that phone won't be personalized. When one personalizes the headset and uses it with different phones, personalization carries across audio sources.

Accordingly, reconsideration of the rejection of claims 146, 148, 174-178, and 189-196 as amended is respectfully requested.

Rejection of Claim 179 under 35 U.S.C. §103(a)

The Examiner has rejected claim 179 under 35 U.S.C. §103(a) as being unpatentable over Campbell and Adams as applied above, and further in view of Jigour (US 5815426).

Furthermore, the combination of Campbell and Jigour shows a cell phone with a memory card. It does not show a headset with a memory card storing an audio data product customized using a hearing profile. Accordingly, the *prima facie* case for unpatentability is incomplete for this additional reason.

Accordingly, reconsideration of the rejection of claim 179 as amended is respectfully requested.

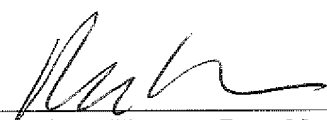
CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. If the Examiner believes a telephone conference would aid the prosecution of this case in any way, please call the undersigned at (650) 712-0340.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1001-3).

Respectfully submitted,

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